

EXHIBIT 8

Joseph Luce

1

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF MICHIGAN
3
4

5 * * *

6
7 WILLIAM SWARVAR,
Plaintiff,

8 - vs. -
9

Case No. 1:14-CV-1302
Hon. Paul L. Maloney

10 MUSKEGON CHARTER TOWNSHIP,
11 MATTHEW ANDERSON, and
JOSEPH LUCE, in their
12 individual and official
capacities,
Defendants.
13 _____/

14
15 DEPONENT: JOSEPH LUCE

16 DATE: Monday, November 16, 2015

17 TIME: 9:51 a.m.

18 LOCATION: 1990 East Apple Avenue

19 Muskegon, Michigan
20

21 REPORTED BY: JENNIFER DIANE CLAUSON, CSR-6867

22 Court Reporting Services

23 courtreportingservices@ymail.com
24
25

Joseph Luce

2

1 APPEARANCES:

2 SHAWN CABOT, ESQUIRE

3 Christopher Trainor & Associates

4 9750 Highland Road

5 White Lake, Michigan 48386

6 (248) 886-8650

7 Appearing on behalf of the Plaintiffs.

8

9 G. GUS MORRIS, ESQUIRE

10 McGraw Morris

11 2075 W. Big Beaver Road, Suite 750

12 Troy, Michigan 48084

13 (248) 502-4000

14 Appearing on behalf of the Defendants.

15

16 ALSO PRESENT:

17 Matthew Anderson

18

19

20

21

22

23

24

25

Joseph Luce

33

1 escort him outside and try to help him along.

2 Q. And I understand that and I'm not -- you know, I get
3 all that.

4 A. Okay.

5 Q. But I'm saying you grab his arm or shoulder, right?

6 A. Basically -- I think I just grabbed him by here and
7 here. Let's go.

8 Q. So you grab him at the elbow and the wrist?

9 A. Right.

10 Q. Was he under a legal duty to go with you at that
11 point?

12 MR. MORRIS: Same objection, you can answer.

13 A. I don't believe so at that point.

14 Q. (BY MR. CABOT): Okay. And when you have his elbow
15 and you have his wrist, what does he do in response,
16 if anything?

17 A. He jerks away from me.

18 Q. Okay. Now, when he jerks away from you, does he
19 knock you off balance?

20 A. I don't recall if I was off balance or not.

21 Q. Do you fall to the floor?

22 A. No.

23 Q. Does he try to flee from you or does he just jerk
24 his arm away?

25 A. First he just jerks his arm away.

Joseph Luce

34

1 Q. Okay. Does he say anything at that point?

2 A. No.

3 Q. Does the girlfriend say anything at that point?

4 A. I don't recall.

5 Q. Did you say to him look, I'm taking you to the
6 hospital?

7 A. Not -- maybe those words weren't used, but yes.

8 Q. Well, tell me in general what you might have said
9 generically?

10 A. Generically, yes, you are going to the hospital at
11 this point.

12 Q. Okay. So he jerks away from you. What does he do
13 at that point? He doesn't flee you said, but --

14 A. At this point, he becomes enraged. You can see his
15 chest swell, arms get up, fists are clinched, and he
16 comes towards me.

17 Q. Okay. Now, you must have been pretty close to him
18 when you had his elbow and his wrist, right?

19 A. Yes. Like I said, it's a small --

20 Q. Right.

21 A. -- space.

22 Q. But to even grab the elbow and the wrist, you're at
23 least within arm's reach of each other, right?

24 A. Correct.

25 Q. When he pulls away, does he just pull the arm away

Joseph Luce

35

1 or does he pull the arm away and then distance
2 himself from you?

3 A. It was not much distance in that house.

4 Q. So pretty much you're at the same distance at that
5 point?

6 A. Correct.

7 Q. And you're saying he clinched his fists?

8 A. Yes.

9 Q. Both of them?

10 A. Yes.

11 Q. Does he raise them up like in a fighter stance or
12 does he clinch them and leave them at his side?

13 A. He left them at his side, but he was pretty
14 aggressive looking.

15 Q. Okay. He never raised his fists to strike you, did
16 he?

17 A. No.

18 Q. Okay. He never tried to kick you, did he?

19 A. No.

20 Q. He never tried to plow you down or head-butt you,
21 did he?

22 A. No.

23 Q. Okay. So he jerks his arm away or I think your word
24 was pulls it away?

25 A. Mm-hm.

Joseph Luce

39

1 A. Right. Well, I guess coming towards me, you know,
2 he was a bigger guy than me. And fists clinched up
3 like this walking towards me I felt threatened.

4 Q. Now, when you say up, they're still down at his
5 side --

6 A. Well, he's --

7 Q. -- right?

8 A. Yes.

9 Q. Okay. They're not like --

10 A. Slight --

11 Q. -- shoulder length?

12 A. No.

13 Q. Okay.

14 A. Slightly raised.

15 Q. Like what? Like waist level?

16 A. Waist level.

17 Q. Okay.

18 A. No, they're not up like this.

19 Q. Okay.

20 A. They're down like this.

21 Q. And I'm not trying to be difficult, but when you say
22 this, it doesn't go into the record.

23 A. I'm sorry.

24 Q. That's okay. Everybody does it.

25 A. Waist level. Not chest level.

Joseph Luce

40

1 Q. Okay. But still never tried to swing at you, did
2 he?

3 A. No.

4 Q. Okay. Never tried to flee from you, did he?

5 A. No.

6 Q. Okay. And so when you say he comes towards you in
7 an aggressive manner, does he actually step towards
8 you or does he like bring his upper half of his body
9 towards you?

10 A. Step and bringing that upper half of the body
11 towards me.

12 Q. Okay. What happens then?

13 A. I put my hand out to stop him from coming closer to
14 me and I tell him stop.

15 Q. Okay. And does he make contact with your hand?

16 A. He pushes me.

17 Q. Okay. Does he make contact with your hand?

18 A. Not my hand, no.

19 Q. Okay. So he doesn't make contact with your hand.
20 So what does he do?

21 A. Two hand pushes me.

22 Q. Okay.

23 A. In both shoulders.

24 Q. Okay. So he makes contact with your shoulders?

25 A. Yes.

Joseph Luce

41

1 Q. Okay. And is it the type of push where he's far
2 enough distance and uses enough force where you
3 could hear it, his hands, make contact with your
4 shoulders or was it basically a soft contact, but he
5 pushes you?

6 A. You could hear it.

7 Q. Okay. So you could hear him make contact with your
8 shoulders?

9 A. Yes.

10 Q. And did that knock you off balance?

11 A. Yes.

12 Q. Okay. Did you fall?

13 A. No.

14 Q. How did it knock you off balance? Did you like take
15 a step backwards or --

16 A. I had to take a step backwards.

17 Q. All right. And what did you do at that point?

18 A. At that point, it was going to be my intention to
19 taser Mr. Swarvar, but I was -- it was too close of
20 an area to where I can't reach for my taser. So I
21 pushed him back to make more space between the two
22 of us.

23 Q. Okay. Now, when you pushed him, would we have been
24 able to hear that contact?

25 A. Probably.

Joseph Luce

43

1 in getting him under control, it didn't come to --
2 it didn't come to that yet.

3 Q. Well, he's not out of control, is he? I mean I know
4 he pushed you, right?

5 A. Right.

6 Q. But he's not like screaming and flailing his arms
7 all over the place and kicking anybody, right?

8 A. No.

9 Q. Okay. So there was opportunity to at least give him
10 one warning, wasn't there?

11 A. Possibly.

12 Q. Okay. So you take a step or two back once he, your
13 testimony is, he pushes you?

14 A. Correct.

15 Q. Then what happens?

16 A. This is a second time that he pushed me? I forget
17 where we're at right now.

18 Q. No, I think this was the first time.

19 A. Okay. Then I push him back, right? To gain that
20 distance and then he comes back at me.

21 Q. Okay.

22 A. Two hand pushes me in the same spot again.

23 Q. Okay. Can hear it again, yours and his probably?

24 A. I believe so.

25 Q. Yes, then what happens?

Joseph Luce

44

1 A. At that point, Officer Anderson tased Mr. Swarvar.

2 Q. Okay. How close were you when you tased Mr. -- when

3 Mr. Swarvar was tased?

4 A. How close was I?

5 Q. Yeah, to Mr. Swarvar?

6 A. A couple feet.

7 Q. Is there a general distance that police officers

8 like to be from the subject of a person being tased?

9 A. I'm sorry. Were you saying how close was Officer

10 Anderson to him or how close was I?

11 Q. How close were you to Swarvar when Anderson tased

12 Swarvar?

13 A. Probably a couple of feet away from Mr. Swarvar.

14 Q. Do you generally like to be a little further away

15 from the subject who's being tased so you don't get

16 bleed off?

17 A. If possible.

18 Q. Okay. Did he ever warn anybody he was going to tase

19 him?

20 A. I don't recall.

21 Q. Would you have like to known that your colleague was

22 going to tase somebody when you're that close so

23 maybe you could get away a little bit?

24 A. There wasn't any movement. There was nowhere to go.

25 Q. You had a living room. I mean you could have

Joseph Luce

45

1 stepped maybe four foot back, right?

2 A. I doubt it the way that living room was set up.

3 Q. Okay. But the fact of the matter is you don't

4 remember him saying -- giving a warning that he was

5 going to tase you --

6 A. Yes.

7 Q. -- tase Mr. Swarvar, correct?

8 A. Right.

9 Q. What kind of taser, and I'll get into this with him,

10 but what kind of tasers do you guys have? The X-26?

11 A. Correct.

12 Q. Was it in stun mode or projectile mode?

13 A. A projectile.

14 Q. And where did the first tase go?

15 A. I don't recall where the first taser went, but it

16 was in probably his front chest stomach area.

17 Q. So we'll just make it easier. The front of his body

18 somewhere?

19 A. Okay.

20 Q. Is that -- I mean is that fair?

21 A. Okay.

22 Q. I don't want to put words in your mouth.

23 A. That's fair.

24 Q. At least somewhere in the front of him --

25 A. Right.

Joseph Luce

50

1 Q. Okay. Then what happens?

2 A. The breezeway door, I guess, it's kind of a French
3 door, two of them that open up.

4 Q. Okay. Do they open inward or outward? Do you
5 remember? I mean I guess if you're in the house --

6 A. I'm thinking they open --

7 Q. -- they go out.

8 A. I'm thinking they're opening inward toward the
9 house.

10 Q. Okay.

11 A. I'm trying to recall if that's accurate.

12 Q. Got a 50/50 shot.

13 A. Right, I know, and I don't want to be wrong.

14 Q. The record will reflect you're not sure.

15 A. Okay, very good.

16 Q. But you believe they opened inward?

17 A. Inward towards the house.

18 Q. Okay.

19 A. Yes.

20 Q. So then what happens?

21 A. He gets -- he barricades himself in between the
22 doors and us.

23 Q. Okay. How's that?

24 A. By holding the door -- holding the door close so we
25 can't get to him.

Joseph Luce

51

1 Q. Okay. So your testimony is at this point, he's in
2 the breezeway?

3 A. Yes.

4 Q. He shuts the French -- the two French doors?

5 A. Mm-hm.

6 Q. Is that a yes?

7 A. Yes, I'm sorry.

8 Q. That's okay. And does he hold it or does he put
9 like a piece of wood there?

10 A. He's holding it.

11 Q. Okay. What happens next?

12 A. I'm able to get my foot in between the two doors.

13 Q. Okay. What type of footwear were you wearing?

14 A. Boots.

15 Q. Leather?

16 A. I don't -- I guess they're leather.

17 Q. Leather or pleather, right?

18 A. Right, right.

19 Q. A thicker boot?

20 A. A thicker boot.

21 Q. Thicker sole?

22 A. Yes.

23 Q. Leather sole or a hard plastic?

24 A. Yeah.

25 Q. Okay. Steel toe or no?

Joseph Luce

56

1 A. Correct.

2 Q. And did you leave it the five-second cycle?

3 A. Yes.

4 Q. Okay. And again, it was projectile mode, correct?

5 A. Correct.

6 Q. Okay. What happens next?

7 A. Mr. Swarvar runs -- literally runs this time out the
8 breezeway door outside breaking the wires.

9 Q. Okay. So when you say breaking the wires, does that
10 mean he pulled them from the connection with the gun
11 or the wires just snapped somewhere in the middle
12 between the prongs and the gun or does he rip the
13 prongs out of his body?

14 A. I don't recall exactly, but the connection was
15 broken.

16 Q. Okay. And when you say run, does he literally run
17 or is he at a fast pace walking?

18 A. Literally runs.

19 Q. Okay. What happens next?

20 A. I was able to switch another cartridge, taser
21 cartridge, into the firing mode of the taser. As he
22 runs outside now, he's running towards fire
23 personnel, Pro Med personnel, not knowing if he's
24 going to hurt himself or harm anybody else --

25 Q. Sure.

Joseph Luce

57

1 A. -- and I deployed another taser round.

2 Q. And that's what hit him in the back?

3 A. Hit him right in the back.

4 Q. Okay. Did you give him a warning like that time

5 like stop, get on the ground, anything like that

6 before you shot him the third time?

7 A. I believe I did at least stop and get on the ground.

8 I don't know exactly.

9 Q. Are you certain you gave a command?

10 A. Yes, I'm certain I gave a command.

11 Q. Did you warn him you were going to tase him a third

12 time if he didn't listen to your commands?

13 A. I don't recall if I warned him or not.

14 Q. Okay. What happens with respect to that?

15 A. Mr. Swarvar falls down to his knees.

16 Q. Okay.

17 A. And we're able to get personnel around him. I saw

18 Officer Anderson, Pro Med, fire department were

19 there and I believe I told everybody that I'm going

20 to shut the taser off and we need to get him

21 handcuffed.

22 Q. Now, that's what I don't understand. So you shoot

23 him with the taser in the back, he falls to his

24 knees, in the grass or cement or what?

25 A. Front yard. I don't recall exactly where he went

Joseph Luce

58

1 down at.

2 Q. Now, you said you told the personnel you were going
3 to shut it off, but doesn't it automatically shut
4 off after five seconds?

5 A. Yes.

6 Q. So then why would you warn people or tell them I'm
7 going shut it off, it's not working after five
8 seconds any way's?

9 A. Well, everybody was right there --

10 Q. Yeah.

11 A. -- ready to help put him into custody.

12 Q. Right.

13 A. So instead of grabbing him and maybe them getting
14 shocked, I told them I'm just going to shut it off,
15 let's get him into custody under control.

16 Q. Well, was the five-second cycle done yet?

17 A. Not if I said I was going to shut it off it wasn't.

18 Q. So what happens when he falls on his knees?

19 A. Well, besides myself and Officer Anderson, I
20 believe, there was two Pro Med and two fire
21 department guys there. We were able to basically
22 put him into handcuffs.

23 Q. Okay. Did anybody pepper spray?

24 A. I believe Officer Anderson did.

25 Q. When was that done?

Joseph Luce

59

1 A. While he is on the ground.

2 Q. Outside?

3 A. Yes.

4 Q. Why?

5 A. Well, in assistance to get him under control because
6 he wasn't -- he was still fighting.

7 Q. Okay. What was he doing?

8 A. Not putting his arms back as commanded, pushing
9 himself in like a pushup position pushing himself
10 up.

11 Q. So he went from his knees to his stomach or what?

12 A. He went from his knees to his stomach.

13 Q. On his own or because of the force of the officers
14 trying to deal with him?

15 A. Because of us putting him to his stomach.

16 Q. Okay.

17 A. And at that point, he was still struggling, not
18 listening, wouldn't comply to anything, not saying
19 anything to us either.

20 Q. Not trying to hit you or kick you though, right?

21 A. No.

22 Q. No, that's not correct or --

23 A. No, he was not trying to hit us or kick us.

24 Q. You kind of motioned and I just want to make sure
25 it's in the record that he was trying push himself

Joseph Luce

60

1 off the ground like doing a pushup?

2 A. Correct.

3 Q. How many people were on him at that point when he's
4 allegedly pushing himself up?

5 A. I don't recall exactly.

6 Q. Are you on him?

7 A. Yes.

8 Q. Is your partner on him?

9 A. Yes.

10 Q. So you weigh 175?

11 A. Correct.

12 Q. Your partner, he'll tell me what he weighs, but even
13 if we assume he weighs about the same?

14 A. Mm-hm.

15 Q. Is over 300 pounds on him?

16 MR. MORRIS: Object to the form of the
17 question. On him is ambiguous. Just because he's
18 on him doesn't mean the total amount of weight is on
19 him.

20 MR. CABOT: Now, don't testify. I'm going to
21 get there.

22 MR. MORRIS: All right.

23 MR. CABOT: So your objection is form?

24 MR. MORRIS: Ambiguous.

25 MR. CABOT: Ambiguous, okay. Thanks.

Joseph Luce

61

1 Q. (BY MR. CABOT): How was your body on him and how
2 much weight was on him?

3 A. That I don't recall exactly.

4 Q. Is it possible your full weight was on him?

5 A. It's possible, but highly unlikely.

6 Q. Is it possible your partner's full weight was on
7 him?

8 A. It's possible.

9 Q. Okay. Now, when you say he did a pushup, does he do
10 it in a sharp movement like try to shirk you guys
11 off of him or is it just does his arms fully extend
12 or tell me what happens.

13 A. It was a slow type of pushup to -- we thought he was
14 trying to get back up.

15 Q. Did his arms ever fully extend?

16 A. I don't recall if they fully extended.

17 Q. How far did his chest go off the ground?

18 A. I don't know exactly. Maybe six inches.

19 Q. Did he knock you or your partner or anyone else off
20 of him --

21 A. No.

22 Q. -- by doing that?

23 A. Nope.

24 Q. Okay. So then what happens?

25 A. I believe that's when Officer Anderson pepper

Joseph Luce

62

1 sprayed him.

2 Q. Did he give a warning for that?

3 A. I don't recall.

4 Q. Are you supposed to?

5 A. If you're able to.

6 Q. Anything precluding him from giving that quick
7 warning?

8 A. I don't think so.

9 Q. So then what happened?

10 A. We were eventually able to get Mr. Swarvar
11 handcuffed and placed on the --

12 Q. Gurney?

13 A. Gurney, yes, thank you. I was looking for a better
14 word.

15 Q. We all know what it is.

16 A. Placed on the gurney for the ambulance.

17 Q. Now, at that point, you got him handcuffed, right?

18 A. Correct.

19 Q. Was he cuffed before or after the pepper spray?

20 A. After, I believe.

21 Q. So he was cuffed first and then sprayed or sprayed
22 first then cuffed, which one?

23 A. Sprayed first then cuffed.

24 Q. Okay. Was anybody on him when he was pepper
25 sprayed?

Joseph Luce

65

1 A. Not that I recall.

2 Q. Okay. Did you go with him to the hospital?

3 A. No, not at that point. I stopped and spoke with the
4 girlfriend.

5 Q. Okay. Did you have her write out a statement?

6 A. The girlfriend?

7 Q. Yeah.

8 A. No, I just took her statement.

9 Q. Did she follow you guys outside? Do you know?

10 A. I don't know.

11 Q. Did you ever knee Mr. Swarvar in the face?

12 A. No.

13 Q. Did you ever see any other officer do that?

14 A. No.

15 Q. Any need to do that?

16 A. No, no need.

17 Q. It would be excessive to do that, wouldn't it?

18 A. Absolutely.

19 Q. Okay. So you don't know if she was outside either,
20 correct?

21 A. I don't know.

22 Q. Okay. Did any law enforcement ride with him in the
23 ambulance?

24 A. I believe Officer Anderson did.

25 Q. And then you eventually went to the hospital, right?

Joseph Luce

81

1 MR. MORRIS: He was there?

2 A. I believe so, yes.

3 Q. (BY MR. CABOT): What about Chief Ken Sanford?

4 What's he going to know?

5 A. The report that I filed.

6 Q. He wasn't there though?

7 A. Correct.

8 Q. Did you ever talk to Prosecutor Matthew Roberts

9 regarding this incident?

10 A. No.

11 Q. What's Brian Fethke, F-E-T-H-K-E, going to know?

12 A. He's the -- I believe at the time, he was a
13 lieutenant from the fire department. He's the one
14 that requested that the police respond.

15 Q. Was he there?

16 A. Yes.

17 Q. Did Mr. Swarvar's head ever come into contact with
18 the porch? Was there a porch there?

19 A. I don't recall if there's an actual porch there. I
20 think it was all just one level leading out to the
21 outside.

22 Q. Do you know if his face ever came into contact with
23 the ground or anything hard that evening once you
24 got there?

25 A. Not that I recall, no.